



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,810	07/09/2002	Thomas L. McDonald	P04560USO	7193

7590 10/04/2006

Zarley McKee Thomte  
Voorhees & Sease  
Suite 3200  
801 Grand Avenue  
Des Moines, IA 50309-2721

EXAMINER

DO, PENSEE T

ART UNIT PAPER NUMBER

1641

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/069,810

Applicant(s)

MCDONALD ET AL.

Examiner

Pensee T. Do

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: Sequence Letter.

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election with traverse of group I, claims 1-11 in the reply filed on November 7, 2005 is acknowledged. The traversal is on the ground(s) that the methods and composition of claims 1-11 are all related by a single protein, namely the colostrums associated SAA protein and as such do not require separate searches. This is not found persuasive because claims 1-11 is drawn to a method only, not a composition. Therefore, the argument is not on point.

The requirement is still deemed proper and is therefore made FINAL.

Since Applicants elected group I, claims 1-11 which has claim 6 drawn to 15 different sequences, restriction is required under 35 U.S.C. 121 and 372 for claim 6 as followed:

Group A1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 1.

Group B1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 2.

Group C1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 3.

Group D1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 4.

Group E1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 5.

Art Unit: 1641

Group F1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 6.

Group G1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 7.

Group H1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 8.

Group I1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 9.

Group J1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 10.

Group K1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 11.

Group L1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 12.

Group M1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 13.

Group N1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 14.

Group O1, claim 6, drawn to an SAA protein comprising an amino acid  
SEQ. ID Number 15.

Groups A1-O1 are drawn to a plurality of disclosed patentably distinct  
peptides inventions comprising materially different amino acid compositions as

evidence by separate SEQ ID Numbers or general composition formulas. These separate peptides bear distinct structural or biochemical properties as substantiated by the separate SEQ ID numbers and diverse composition configurations, therein having different binding epitopes for unique diverse compositions. **Therefore, each disclosed patentably distinct peptide sequence is considered a separate invention.** See Official Gazette 1232 OG 242(116) March 21, 2000. Therein the O.G. notice permits the examiner to examine up to ten nucleotide sequences per application based on the use of US PTO resources. Resources are now stretched to the limit, such that only one sequence should be searched per application.

It is recognized that although the search for the inventions may overlap they are not totally co-extensive, where the search for one would fully encompass the search for the others. Because these inventions are distinct for the reasons given above and the search required for groups A1-O1 are not mutually inclusive (i.e. the search for one invention encompasses in totality the search for the other inventions) restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b)

if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Sequence Non-Compliance***

This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures. Applicant must comply with the requirements of the sequence rules (37 CFR 1.821 - 1.825) before the application can be examined under 35 U.S.C. §§ 131 and 132. Claim 12 recites sequences without including the appropriate sequence identification numbers. Please add the corresponding sequence identification numbers.

Applicant is given ONE MONTH from the mailing date of this communication within which to comply with the sequence rules, 37 CFR 1.821 - 1.825. Failure to comply with these requirements will result in ABANDONMENT of the application under 37 CFR 1.821(g).

Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). Direct the reply to the

undersigned. Applicant is requested to return a copy of the attached Notice to Comply with the reply.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1641 – Central Fax number is (571) 273-8300, which is able to receive transmissions 24 hours/day, 7 days/week. In the event Applicant would like to fax an unofficial communication, the Examiner should be contacted for the appropriate Right Fax number.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pensee T. Do whose telephone number is 571-272-0819. The examiner can normally be reached on Monday-Friday, 7:00-3:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571-272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/069,810  
Art Unit: 1641

Page 7

Pensee T. Do  
Patent Examiner  
September 22, 2006

  
LONG V. LE 09/28/06  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600